

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

FIDEL LEON ODIMARA,

Petitioner,

v.

DREW BOSTOCK,

Respondent.

Case No. 2:24-cv-01412-MJP-TLF

ORDER ON MOTION TO  
SUBSTITUTE, ADDING BRUCE  
SCOTT AS A RESPONDENT, AND  
DIRECTING SERVICE ON BRUCE  
SCOTT

Petitioner Fidel Leon Odimara is currently detained by United States Immigration and Customs Enforcement ("ICE") at the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. Dkt. 1. Petitioner has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, naming Drew Bostock, ICE Field Office Director, as the respondent and seeking release from detention or, in the alternative, a bond hearing. *Id.* at 1, 16. Petitioner has also filed a motion to substitute Bruce Scott, the warden of NWIPC, as the respondent in this action. Dkt. 6.

The current respondent, represented by the United States Attorney's Office, has filed a return memorandum and motion to dismiss arguing that the petition should be dismissed for two reasons: (1) because petitioner has failed to name his immediate custodian and therefore the Court lacks jurisdiction; and (2) because petitioner's detention is statutorily authorized under 8 U.S.C. § 1226(c) and comports with due process. Dkt. 7. The Government has also responded to petitioner's motion to substitute

ORDER ON MOTION TO SUBSTITUTE, ADDING  
BRUCE SCOTT AS A RESPONDENT, AND  
DIRECTING SERVICE ON BRUCE SCOTT - 1

1 the respondent, stating that it takes no position on the motion, but that Bruce Scott is  
2 not a federal employee and therefore the U.S. Attorney's Office does not represent him  
3 and their response to the petition is not filed on Mr. Scott's behalf. Dkt. 7. Therefore, the  
4 Government argues that if the Court grants petitioner's motion to substitute, that Bruce  
5 Scott should be served with the petition and provided with an opportunity to respond. *Id.*  
6 at 9-10.

7 "[L]ongstanding practice confirms that in habeas challenges to present physical  
8 confinement—'core challenges'—the default rule is that the proper respondent is the  
9 warden of the facility where the prisoner is being held ...." *Rumsfeld v. Padilla*, 542 U.S.  
10 426, 435 (2004). In *Doe v. Garland*, the Ninth Circuit recently "affirm[ed] the application  
11 of the immediate custodian and district of confinement rules to core habeas petitions  
12 filed pursuant to 28 U.S.C. § 2241, including those filed by immigrant detainees." 109  
13 F.4th 1188, 1199 (9th Cir. 2024). The Ninth Circuit found that "[t]he plain text of the  
14 federal habeas implementation provision delineates that petitions must include the  
15 name of 'the' person maintaining custody over the petitioner[.]" *Id.* at 1195. Petitioner is  
16 detained at the NWIPC in Tacoma Washington, and it appears the parties agree his  
17 immediate custodian is Bruce Scott, warden of NWIPC.

18 However, the Court notes that the Ninth Circuit in *Doe v. Garland*, has also  
19 stated that:

20 [e]ven in cases where private contract wardens are named as respondents, the  
21 government can and has stepped in to defend its interest in keeping petitioners  
22 detained. See 28 U.S.C. § 517 (providing that "[t]he Solicitor General, or any  
23 officer of the Department of Justice, may be sent by the Attorney General to any  
24 State or district in the United States to attend to the interests of the United States  
in a suit pending in a court of the United States ...."); see also *Smith v. Idaho*, 392  
F.3d 350, 356 (9th Cir. 2004) (noting that "the custodian is the state's agent" and  
must be "named as a respondent"); *Stokes v. U.S. Parole Comm'n*, 374 F.3d  
1235, 1239 (D.C. Cir. 2004) (holding that the proper respondent to the habeas

petition was the private contract warden of the Ohio facility where petitioner was then detained); *Freire v. Terry*, 756 F. Supp. 2d 585, 585 (S.D.N.Y. 2010) (providing an example when the United States Attorney's office stepped in to defend a § 2241 petition on behalf of a private contract warden).

109 F.4th 1188, 1196–97. The Court notes that there is a pending motion to dismiss filed by the U.S. Attorney's Office on behalf of the current respondent (Drew Bostock) that seeks dismissal of the petition on the merits as well as dismissal for lack of jurisdiction for failure to name the proper respondent.

Accordingly, in light of the current procedural posture of the action, and in order to ensure that all necessary parties are a part of the case at this stage, the Court hereby ORDERS:

(1) The motion to substitute (Dkt. 6) is GRANTED in part and Bruce Scott is *added* as a separate respondent in this action. The Clerk is directed to update the docket accordingly.

(2) The Clerk is further directed to arrange for service upon Bruce Scott (warden of NWIPC), upon the United States Attorney General in Washington, D.C., and upon the civil process clerk at the Office of the United States Attorney for the Western District of Washington of copies of the petition, of all documents in support thereof, and of this Order, by registered or certified mail, return receipt requested.

(3) ***Within thirty (30) days after such service***, respondent Bruce Scott shall either (a) inform the Court as to whether he intends to join in the current return and motion to dismiss filed by respondent Drew Bostock, or (b) show cause why a writ of habeas corpus should not be granted by filing his own return as provided in 28 U.S.C. § 2243. As a part of any return, respondent Bruce Scott shall submit

1 a memorandum of authorities in support of his position, and should state whether  
2 an evidentiary hearing is necessary. Respondent Bruce Scott shall file the return  
3 with the Clerk of the Court and shall serve a copy upon petitioner.

4 (4) If a separate return is filed, it will be treated in accordance with LCR 7(d)(4).

5 Accordingly, on the face of the return, respondent Bruce Scott shall note it for  
6 consideration no earlier than 28 days after it is filed, and the Clerk shall note the  
7 return accordingly. Petitioner may file and serve a response no later than 21 days  
8 after the return is filed, and respondent Bruce Scott may file and serve a reply no  
9 later than 28 days after the return is filed.

10 (5) The Clerk is directed to re-note respondent Drew Bostock's motion to dismiss  
11 (Dkt. 7) to **January 17, 2025**.

12 (6) The Clerk shall send copies of this Order to petitioner and to the Honorable  
13 Marsha J. Pechman.

14 Dated this 18th day of December, 2024.

15  
16 

17 Theresa L. Fricke  
18 Theresa L. Fricke  
19 United States Magistrate Judge  
20  
21  
22  
23  
24